

No. 2024-1285

IN THE
United States Court of Appeals
FOR THE FEDERAL CIRCUIT

APPLE INC.,

Appellant,

v.

INTERNATIONAL TRADE COMMISSION,

Appellee,

Appeal from the United States International Trade Commission
in Investigation No. 337-TA-1276

**MASIMO CORPORATION AND CERCACOR LABORATORIES, INC.'S
UNOPPOSED MOTION FOR LEAVE TO INTERVENE**

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Laboratories, Inc.*

CERTIFICATE OF INTEREST

Counsel for Intervenors Masimo Corporation *and* Cercacor Laboratories, Inc. certifies the following:

1. The full name of the parties represented by me is:

Masimo Corporation
52 Discovery
Irvine, CA 92618
Telephone: 949-297-7000

Cercacor Laboratories, Inc.
15750 Alton Pkwy
Irvine, CA 92618
Telephone: 800-610-8522

2. The name of the real party in interest represented by me is:

N/A

3. Full name of all parent corporations and all publicly held companies that own 10 percent or more of the stock of the party represented by me are:

Masimo Corporation has no parent corporation. BlackRock, Inc. owns at least 10% of Masimo Corporation's stock.

Cercacor Laboratories, Inc. has no parent corporation and no publicly held company owns at least 10% of Cercacor Laboratories, Inc's stock.

4. Other than those who have already made an appearance in this Appeal, the name of all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this Court are:

Knobbe, Martens, Olson & Bear, LLP: Ted M. Cannon, Brian C. Claassen, Irfan A. Lateef, Alan G. Laquer, Kendall M. Loebbaka, Carol Pitzel Cruz, Douglas B. Wentzel, Daniel C. Kiang, William R. Zimmerman, Karl W. Kowallis, and Matthew S. Friedrichs.

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal are as follows:

Apple Inc. v. Masimo Corporation et al., 1:22-cv-01378-MN (D. Del).

6. Information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees):

None.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 26, 2023

By: /s/ Joseph R. Re
Joseph R. Re

*Counsel for Intervenors
Masimo Corporation and Cercacor
Laboratories, Inc.*

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, Masimo Corporation and Cercacor Laboratories, Inc. (collectively, “Masimo”), by and through their undersigned counsel, respectfully move to intervene in the above-captioned appeal on the side of the Appellee, the United States International Trade Commission (“Commission”). Masimo seeks this relief on an expedited basis so that it can oppose the Emergency Motion for an Immediate Interim Stay Pending Disposition of Motion For Stay Pending Appeal (“Interim Emergency Motion”) and the Emergency Motion to Stay Enforcement of ITC’s Orders Pending Review (“Regular Emergency Motion”) filed by Apple on December 26, 2023.

The petition for review was filed by Appellant Apple, Inc. (“Apple”) on December 26, 2023, and this motion is therefore timely because it is being filed within 30 days thereof in accordance with Rule 15(d). Masimo has discussed this motion with counsel for the Commission and counsel for Apple, Inc. Both the Commission and Apple have confirmed they do not oppose this motion.

In the underlying Investigation, Masimo asserted that Apple violated Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by importing and selling certain Apple Watch models that infringe five Masimo patents: U.S. Patent Nos. 7,761,127, 10,687,745, 10,912,501, 10,912,502, and 10,945,648. The Commission found that Apple violated Section 337 because it had infringed five valid claims of U.S. Patent Nos. 10,912,502 and 10,945,648.

As the complainant in the underlying Investigation, Masimo has a substantial and undisputable interest in the outcome of this appeal. The Court routinely permits intervention by a prevailing party in the ITC, so that the party can support the Commission's decision in its corresponding appeal. *See, e.g., Surface Tech., Inc. v. U.S. Int'l Trade Comm'n*, 780 F.2d 29, 30-31 (Fed. Cir. 1985); *Roku v. Int'l Trade Comm'n*, No. 2022-1386 (Fed. Cir. Apr. 18, 2022), Dkt. No. 17; *Universal Electronics, Inc. v. Int'l Trade Comm'n*, No. 2022-1352 (Fed. Cir. Feb. 22, 2022), Dkt. No. 12.

In this appeal, Apple seeks to overturn the Commission's order preventing Apple from importing or selling after importation articles that infringe valid claims in Masimo's patents. Masimo moves for leave to intervene because its interests are directly at issue in this appeal, and it has no other means to protect these interests. Masimo was the Complainant in the underlying Commission investigation and actively participated in all aspects of the investigation at the agency level. Masimo has invested considerable resources to protect its valuable intellectual property rights. Masimo has a significant interest in defending its patents and protecting its patented technology against Apple's infringing activities. Moreover, Masimo is familiar with the legal and factual issues involved in this appeal; thus, Masimo is uniquely situated to aid in this Court's consideration of Apple's arguments. Masimo is also the beneficiary of the Limited Exclusion Order and Cease and Desist Order

issued by the Commission that bans the importation and sale after importation of infringing Apple Watches, and Apple seeks to challenge those remedies in this appeal. The outcome of this appeal is important to Masimo, and intervention is necessary to ensure Masimo has an opportunity to fully protect its patent rights.

For these reasons, Masimo respectfully requests that this Court grant the unopposed motion to intervene.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 26, 2023

By: /s/ Joseph R. Re

Joseph R. Re
Stephen C. Jensen
Sheila N. Swaroop
Jonathan E. Bachand

*Counsel for Intervenors
Masimo Corporation and Cercacor
Laboratories, Inc.*

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2). This brief contains 537 words, excluding the parts of the brief exempt by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b)(2).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font Times New Roman.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 26, 2023

By: /s/ Joseph R. Re

Joseph R. Re

*Counsel for Intervenors
Masimo Corporation and Cercacor
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